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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL RYAN CRAIG,

Defendant and Appellant.

A133511

(Solano County
Super. Ct. Nos. FCR273321)

Daniel Ryan Craig (appellant) appeals from his conviction and sentence following a jury trial which led to his conviction for possession of child pornography (Pen. Code, § 311.11, subd. (a)),¹ and a finding by the trial court that appellant committed the crime while he was on bail for another offense (§ 120221.1). Appellant's counsel has filed an opening brief in which no issues are raised, and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. Counsel has declared he notified appellant that no issues were being raised by counsel on appeal, and that an independent review under *Wende* instead was being requested. Appellant was also advised of his right personally to file a supplemental brief raising any issues he chooses to bring to this court's attention. No supplemental brief has been filed by appellant personally.

On August 26, 2010, the Solano County District Attorney charged appellant with one count of possession of child pornography (§ 311.11, subd. (a)). The information also

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

alleged that at the time of committing the crime, appellant was on bail for another offense, within the meaning of section 12022.1 (on-bail enhancement). He pleaded not guilty and denied the on-bail enhancement.

The case proceeded to jury trial commencing on June 1, 2011,² with the court meeting with counsel and ruling on certain motions in limine. Thereafter, a jury was empanelled and heard evidence on June 2 and 7. At the conclusion of the evidence, the jury was duly instructed and began its deliberations. After less than 90 minutes of deliberations, the jury returned its verdict of guilty as to count one. The jury was polled at the request of the defense, and the verdict was found to be unanimous. The jury was then discharged, and the matter continued to July 27 for judgment and sentence.

Before sentencing was held, a motion was filed by the prosecution seeking to have the court set a trial relating to the on-bail enhancement. In the motion, the prosecutor pointed out during the off-the-record proceeding with the court on June 1, and prior to empanelling the jury, appellant had requested a bifurcation of the on-bail enhancement from the trial on count one, and had also agreed to waive a jury trial as to the enhancement. Apparently, when the court realized that the agreed-to waiver and bifurcation had not been transcribed, the court indicated its intention either to dismiss the on-bail enhancement, or to declare a mistrial. The court then invited counsel to brief the issue. Relying on *People v. Saunders* (1993) 5 Cal.4th 580 (*Saunders*), the prosecutor argued that the failure of defense counsel to object to the discharge of the jury constituted a waiver of any and all constitutional rights to have the enhancement tried by the same jury which heard the evidence relating to the main charge. Therefore, the prosecution requested that a new jury be empanelled without further delay to try the on-bail enhancement.

An opposition to the motion was filed by appellant, in which appellant also moved alternatively to have the on-bail enhancement dismissed. He argued that *Saunders* was distinguishable. Since the failure to try the on-bail enhancement before the jury was discharged was simply a matter of inadvertence, appellant argued he was entitled to a

² All subsequent dates occurred in the year 2011.

dismissal under federal constitutional principles of due process, double jeopardy, and the Fifth and Sixth Amendments to the United States Constitution.

On October 5, the trial court denied appellant's motion to dismiss the enhancement. Appellant then waived any right to a jury trial as to the on-bail enhancement, and the enhancement was tried to the court, which found the special allegation to be true. The case proceeded immediately to judgment and sentence. Sentencing was ordered suspended, and appellant was granted three years formal probation, with conditions, including that he serve 180 days in county jail. This appeal followed.

Conclusions Based Upon Independent Record Review

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal. The jury's verdict was supported by substantial evidence, and was consistent with applicable law. The court's ruling relating to the trial of the on-bail enhancement was not erroneous, and was supported by *Saunders, supra*, 5 Cal.4th 580. We also discern no error in the sentencing, as the sentencing choices made by the trial court were supported by substantial evidence, and were well within the discretion of the trial court. The conditions of the grant of probation, including fines and penalties imposed, were supported by the law and facts. At all times appellant was represented by counsel.

DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.